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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/475,912	12/30/1999	PERRY A. PIERCE	E-925	7042

7590 08/16/2002

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EXAMINER

ZURITA, JAMES H

ART UNIT	PAPER NUMBER
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3625

DATE MAILED: 08/16/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/475,912

Applicant(s)

PIERCE, PERRY A.

Examiner

James Zurita

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,9-17 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,9-17 and 19-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

A First Office Action of 23 April 2002 rejected claims 1-24. In a response dated 22 July 2002, applicant amended claims 1, 7, 17, 20, cancelled claims 2, 8, 18, and traversed rejections of claims 1-24.

Claims 1, 3-7, 9-17, 19-24 remain and will be examined.

Response to Arguments

Applicant's arguments filed 22 July 2002 have been fully considered but they are not persuasive.

Applicant argues that Rosenberg does not disclose or anticipate a system or method wherein a fee for downloading a data item has a *range* specified by a Seller and where the fee is defined by a maximum and minimum amount, and where the minimum amount is what a seller is willing to collect while a maximum amount is posted by a seller. In contrast, applicant argues, Rosenberg discloses different rates that are dependent upon volumes or rates for different classes, i.e., corporate rates.

In response to applicant's arguments, Rosenberg describes the use of multiple prices and rates available to buyers from a seller's site. Rosenberg specifically mentions an individual rate and a corporate rate. For corporate buyers, Rosenberg describes that the system provides details of various corporate rates that are based on the number of copies of an item. A buyer selects the desired rate. Rosenberg provides

a real time capability for corporations to buy rights to distribute multiple copies of an item on an item-by-item basis.

Rosenberg also describes a price structure where a designated rate for multiple copies is automatically invoked any time a particular buyer purchases an item. In addition, when an individual has purchased an item at an individual rate, Rosenberg shows that a seller may determine to lump all individual purchases as part of a single corporate purchase. This allows a system the flexibility to decrease the cost to a corporation of those items already purchased by individuals at individual rates.

Rosenberg provides an example. An item is available to an individual at \$0.50 per item. If the individual buys 10 items, the total price to the individual is \$5.00. However, for the same amount of \$5.00, a corporation may buy 15 of the same items. Sellers usually offer goods for sale when sellers can cover the costs of obtaining and producing a good. A break-even point is the point at which revenues equal costs. This point is obtained by break-even analysis, which determines the volume of sale at which fixed and variable costs will be covered. Sales over the break-even point produce profits; Sales below a break-even point produce losses. (**Barrons** Dictionary of Business Terms, definition of Break-even point).

To provide a range of prices, a business usually first determines a minimum price at which it will sell its goods. Barring other business circumstances, businesses will not sell products below this price. This minimum price is usually kept secret, to prevent competitors from undermining business strategies.

Rosenberg clearly shows the existence of a minimum seller price, although he does not provide details as to what the actual minimum price is. Using Rosenberg's example, and assuming that a seller is a rational decision maker, running a legitimate business legally, it would be proper to conclude that both individual sales and corporate sales will provide a profit margin to a seller. Thus, it would also be proper to conclude that a seller's minimum pricing points are below **price * quantity** lines for both the individual and the corporate buyer. In Rosenberg's example, an individual pays \$0.50 for each additional item, while a corporation will pay only \$0.333 per item.

Another common pricing scheme is one that reduces an item's price for specific quantities purchased. For example, a seller might offer both individuals and corporations various discounts: for 1-15 items, an individual's fee is \$0.50 per item, corporate fee is \$0.33 per item. For 16-30 items, an individual's fee might be \$0.45 per item, while a corporate fee might be \$0.25 per item. For 31-50 items, an individual's fee might be \$0.40/item while a corporate fee might be \$0.20 per item. These ranges are often available as pricing schedules to purchasing agents and the public. Sometimes, sellers conclude special deals with buyers outside of these schedules. Since sellers often buy and sell items at different prices, a seller's overall profit is often determined by mathematical integration of multiple profit/loss boundary lines over time.

Fees available to buyers are published by a seller may also be referred to as the maximum fees for a price/quantity combination. The fees displayed on the same pricing tables are often also the minimum fees that a seller is willing to collect from a buyer for an item. Absent other business reasons, sellers often reject a buyer's offer to pay an

fee lower than what a seller has decided is above a break-even point. In such cases, a published amount may become the minimum amount that a seller is willing to collect from a buyer for an item. Similarly, a fee posted by a seller on a fee schedule often becomes a de-facto maximum amount, since a buyer will normally be loath to offer more money for an item than what a seller is asking. To do so would be contrary to accepted business behavior.

Thus, when Rosenberg discloses the use of different rates and volumes for different classes of buyers, types of price schedules for different classes of buyers, Rosenberg is clearly showing the use of maximum fee posted by a seller and minimum fee that a seller is willing to collect from a buyer for specified items.

Therefore, applicant's arguments are rejected.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3-7, 9-17, 19-24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenberg et al. US Patent 6,363,357-B1, *Rosenberg*.

Rosenberg discloses a system and method via a service provider to allow a seller to store a data item that the seller wishes to sell electronically to a buyer for a fee, said repository system comprising:

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- storage for data items and monetary information (see at least references to files at seller web site service providers; see at least item 508 and related text concerning posting a file; see at least Col. 5, line 10-Col. 7, line 53);
- a sellers account (see at least references to seller account, Col. 7, line 54-Col. 8, line 30) and a buyers account (see at least references to buyer vault and buyer account, Col. 4, line 22-Col. 5, line 33, Col. 7, line 54-Col. 8, line 19);
- storage for posting fees for downloading data items, and where buyers deposit funds in monetary storage prior to downloading data items (see Fig. 4 and related text concerning 'refill'; see also at least Col. 4, line 55-Col. 5, line 34);
- repository system comprising communication program(s) to link data storage, information storage and monetary storage (see at least references to program functions in Figs. 3-9, and related text concerning linking operations performed by programs to communicate information among the item storage, information storage and money data; see also at least Col. 5, line 7-33, Col. 6, line 40-Col. 7, line 15);
- deducting a sum from a deposited fund according the posted fee in the storage device and credit the monetary sum to a seller account (see at least item 644, Fig. 6 and related text in Col. 6, line 40-Col. 8, line 19 concerning debiting a buyer account and crediting a seller account);
- Allowing a buyer to download the data item from the data storage (see at least Abstract, Col. 2, lines 44-58, Col. 5, line 34-Col. 7, line 54, Col 8, lines 20-30, Col. 9, line 47-Col. 10, line 44; and

- To credit the monetary sum to the seller's account (see at least Col.7, line 54-Col. 8, line 55, describing processes where a **seller** account may be credited).
- different rates that are dependent upon volumes or rates for different classes of buyers such as individual buyers and corporate buyers (see at least Col. 11, lines 1-64).

Rosenberg discloses that funds are deposited in a bank or stored in a stored value card and that deposited/stored fund may be withdrawn by a data repository system to pay a seller (see at least references to bank, payment broker and credit company, Fig. 1, 2 and related text; see also at least Col. 7, line 54-Col. 8, line 19 concerning payment processing, and how buyers can withdraw and refill their funds from a bank. It is inherent in payment systems that debit cards, stored value cards, bank cards, among others, may be used interchangeably to pay for goods. Fig. 6, item 634, shows a step that checks whether there are funds available in a buyer account. This process carries out functions that allow a data repository to withdraw funds from bank).

Rosenberg discloses the system wherein a fee deducted from a fund deposited by a buyer may be credited to a seller (see at least Col.7, line 54-Col. 8, line 55, describing processes where a seller account may be credited).

Rosenberg discloses that a seller's account may credited with buyer payments and that a seller's account may then be debited to execute a payment in the form of a fee and/or a commission to a service provider for using the data repository (See at least Col. 12, line 49-58 concerning charges to a seller's account for services used at the

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service provider. See also Col. 8, line 20-Col. 9, line 15 concerning debits to seller account. Where amounts can be debited to a seller account, the types of debits and their frequency are irrelevant).

Rosenberg discloses monetary storage that includes an account for a seller to store fees credited to him (see at least Fig. 1-3 and related text concerning how a seller may set up an account that is then used to store information concerning payments made to seller by buyers. See also Col. 4, line 7-Col. 6, line 8, and discussion concerning claims 3-5, above).

As per claims 7 and 10, Rosenberg disclose a seller using identification code to access the seller's account and to update data item(s) and/or related fee (See at least Col. 5, lines 33-Col. 6, line 39, Col. 7, lines 16-53 concerning seller identification code and how a seller accesses his information to place items for sale. See also at least Fig. 3 and related text concerning seller registration process, creates and accesses related account information).

As per claims 8 and 18, Rosenberg et al. discloses the system and methods of claims 2 and 17, respectively, wherein the fee for downloading the data item has a range specified by the seller and defined by a maximum amount and a minimum amount, posting the maximum amount as the fee for downloading a data item, and the monetary sum deducted from the fund deposited by the buyer is equal to a price offered by the buyer wherein the offered price falls within the fee range as specified by the seller (see at least Col. 11, lines 1-64).

Rosenberg discloses the system and method of claims 8 and 19, respectively, to automatically check the offered price by the buyer in order to determine whether the posted offer falls within the fee range as specified by the seller (see at least references to bank, payment broker and credit company, Fig. 1, 2 and related text; see also at least Col. 7, line 54-Col. 8, line 19 concerning payment processing, and how buyers can withdraw and refill their funds from a bank. It is inherent in payment systems that debit cards, stored value cards, bank cards, among others, may be used interchangeably to pay for goods. Fig. 7 displays product information, including a price and a buyer can press the buy button to purchase an item. Fig. 6, step 634, checks whether there are funds available in a buyer account. This process carries out functions that allow a data repository to withdraw funds from bank. See at least Col. 6, line 40-col. 7, line 15).

Rosenberg discloses the storage and use of an excerpt of a data item so as to allow the buyer to obtain the excerpt, preview the excerpt without the possibility of downloading the data item without paying the seller (see at least Figs. 2, 6, 7 and items 216, 600, 610, 612. See also at least Col. 6, line 40-Col. 7, line 15. These figures and sections describe previewing a product by downloading a related excerpt, paying a seller, and downloading the product).

Rosenberg discloses the use of a hosting service to manage sophisticated financial transactions on the World Wide Web (see at least Col. 1, line 13-Col. 2, line 41). It is an inherent function of such hosts to provide services that include administration services, such as password administration, certificates and key

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management. Among their fiduciary responsibilities, which are usually based on contracts, service providers notify users of the host regarding problems.

Rosenberg discloses that a data item may be encrypted prior to a buyer downloading the data item (see at least Abstract, Col. 2, lines 44-67, Col. 4, lines 22-54, Col. 5, lines 34-69, Col. 7, line 16-Col. 19, line 19, Col. 9, line 47-Col. 10, line 13, Col. 12, lines 49-58).

Rosenberg discloses the use of digital signatures and digital certificates (see at least references to SSL, Secure Socket Layer protocol developed by NETSCAPE COMMUNICATIONS® for transmitting private documents via the Internet. SSL works by using a private key to encrypt data that is transferred over an SSL connection. See at least Col. 5, lines 1-33, Col. 7, lines 16-53. See also at least Fig. 4, steps 410-414 which discusses the use of certificates, and at least Col. 4, line 55-Col. 5, line 33).

Rosenberg does not specifically state that a fee for downloading a data item has a range specified by a Seller and defined by a maximum amount and a minimum amount, and that the maximum amount is the fee posted by the Seller, and that a minimum amount is what a Seller is willing to collect from a buyer for downloading a data item.

However, as discussed in response to arguments, Rosenberg teaches the use of price ranges for different buyers, and provides several samples (see at least Col. 11, lines 1-64). Thus Rosenberg suggests application of demand/supply analysis and break-even analysis along several target buyer markets and business models.

As noted above, fees available to buyers are published by a seller may also be referred to as the maximum fees for a price/quantity combination. The fees displayed on the same pricing tables are often also the minimum fees that a seller is willing to collect from a buyer for an item. Absent other business reasons, sellers often reject a buyer's offer to pay an fee lower than what a seller has decided is above a break-even point. In such cases, a published amount may become the minimum amount that a seller is willing to collect from a buyer for an item. Similarly, a fee posted by a seller on a fee schedule becomes a de-facto maximum amount, since a buyer will normally be loath to offer more money for an item than what a seller is asking. To do so would be contrary to accepted business behavior.

Thus, when Rosenberg teaches the use of different rates and volumes for different classes of buyers, types of price schedules for different classes of buyers, Rosenberg is clearly showing the use of maximum fee posted by a seller and minimum fee that a seller is willing to collect from a buyer for specified items.

Rosenberg suggests the application of break-even analysis and price differentials to at least the following other fields:

- Rosenberg teaches subscription services (see at least Col. 4, lines 1-6). As is well-known, subscribers to a news magazine, for example, receive their samples at a lower price per item than individuals who purchase those items individually.
- Rosenberg teaches international economic transactions (see at least references to currency costs, at least in Col. 9, lines 41-46), and stock transactions (see at least Col. 9, lines 47-59). Currency and stock transactions are examples of

arbitrage. Arbitrage is a financial transaction involving the simultaneous purchase in one market and sale in a different market with a profitable price or yield differential (**Barrons** Dictionary of Business Terms, definition of arbitrage).

Examiner takes official notice that varying price discounts to different buyers are common in every day business, and that discounts often occur according to seller price schedules.

Therefore, it would have been obvious to one of ordinary skill in the art of electronic commerce at the time the invention was made to combine Rosenberg and well-known methods of applying discounts to various buyers to describe maximum and minimum prices acceptable to buyers and sellers for items.

One of ordinary skill in the art of electronic commerce at the time the invention was made would have been motivated to combine Rosenberg and well-known methods of applying discounts to various buyers to describe maximum and minimum prices acceptable to buyers and sellers for items for the obvious reason that sellers often wish to maximize profits. While it is a simple matter to compute break-even points and profit margins for fixed prices and static quantities, businesses often determine overall profits by different combinations of break-even points from specific industries and buyers. Thus, while a business may expect to sell a number of units to individuals for one price, a business often targets corporate buyers, as taught by Rosenberg. Corporate buyers often provide constant revenue streams to sellers. Sellers, in exchange, may offer discounts based on number of items sold in exchange for an assurance of at least a stable demand for the items. Both buyers and sellers can then anticipate levels of

inventory required and partake of benefits brought by just-in-time inventory systems, cash flow variances, and production supply capacity matched to defined demand for their products all along multiple supply chains.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James Zurita whose telephone number is 703-605-4966. The examiner can normally be reached on 8:30 am to 5:00 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

James Zurita
Patent Examiner
Art Unit 3625
August 14, 2002


JEFFREY A. SMITH
PRIMARY EXAMINER